

United States Senate
Committee on Finance
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Grassley, Baucus work to build confidence in nonprofits through greater transparency

WASHINGTON — Seeking greater transparency into the workings of tax-exempt organizations including charities, Sens. Chuck Grassley and Max Baucus are urging the Treasury Secretary to update the IRS tax form used by the nonprofit sector.

The senators made their request in a letter sent today. They urged the Treasury Department to make gathering more and better information a top priority and to pay particular attention to the operational complexities of nonprofit hospitals and universities. “While we always hear that sunshine is the best disinfectant, sunshine can’t do its work unless we open the blinds,” Grassley and Baucus wrote. “The sooner we open those blinds the better.”

Grassley and Baucus have worked together to conduct oversight and achieve major legislative reforms of the laws that help to govern tax-exempt organizations. Baucus is Chairman and Grassley is Ranking Member of the Senate Committee on Finance.

“At this point, it’s clear the IRS needs to get a better picture on a wide range of issues involving tax-exempt organizations,” Grassley said. “Executive pay is one of them. It can be easier to understand how much a Fortune 500 executive is paid than how much a charity is compensating executives due to the shell games that go on in some cases. Fast and loose games in this area and others undermines the mission of nonprofits and fosters a public cynicism that’s very detrimental to all charities as they rely on public support and backing for their nonprofit work.”

“Charities and other nonprofit organizations do a great deal of work to benefit American communities, both to deal with crises and to improve our daily lives,” said Baucus. “It’s important to ensure, however, that these organizations receiving tax-exempt status earn it on a daily basis, and keep their activities and policies in line with the special status conferred on them by the tax code.”

The text of the May 29, 2007 Grassley-Baucus letter to Paulson follows here.

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May 25, 2007

The Honorable Henry Paulson
Secretary
Department of Treasury

Washington, D.C.

Dear Mr. Secretary:

We are writing to you regarding the issue of charities and transparency. We appreciate your comments that you would make a priority during your time as Secretary the strengthening of our nation's nonprofit sector. It is clear that transparency and openness are pillars in encouraging our nation's charities to be responsive to the needs of the community and to act in accordance with the principles and goals for which they were established and that they seek contributions from the public.

The discussion of transparency and openness naturally centers upon the Form 990 and Form 990 PF that charities file with the Internal Revenue Service (IRS). These documents are then made publicly available through Guidestar and other services. Our concern is that the Form 990 has not kept up with modern practices in the charitable sector and needs significant updating.

The IRS must particularly recognize that the Form 990 is not adequate to encompass vital information regarding major parts of the nonprofit sector – especially hospitals and universities. It is for that reason that we view it as vital that the IRS include for major subsectors of the charitable field, supplemental information requests. Large, complex institutions, such as hospitals and universities, require more detailed questions tailored to the specifics of their fields if transparency and openness are to have real value.

In addition to the public benefits of improved openness and transparency, we believe that an updated and more thorough Form 990 and Form 990 PF will allow the IRS to better identify those entities that warrant additional review or further questions – such indications of compliance will improve the efficiency and effectiveness of limited IRS resources and also mean that the charities that are doing the right thing are less likely to be subject to audit. Improvements in the Form 990 must certainly have at the forefront the goal of improving the focus of IRS enforcement. In particular, we are concerned that the IRS have adequate information to review bond transactions and UBIT as well as other matters that impact on the tax gap.

There are several points that we want to touch on that from our work in and oversight of charities we believe are in critical need of greater reporting and transparency:

1) Executive Compensation. We continue seeing in our oversight executives who have compensation from different sources – including other charities, joint ventures, contracts and subsidiaries.

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In addition, some charities are as creative as for-profit entities in providing compensation – paying for housing, first class-travel, spousal travel, deferred compensation, incentive compensation and bonuses, fringe benefits, loans, dining and often entire life-styles.

The source and the amount of compensation of an executive of a charity should be crystal clear. We are concerned that right now it is often easier to understand how much a Fortune 500 CEO is being paid than how much a charity is compensating its executives. In addition, the public needs to easily see the total amount of compensation and not have to piece it all together from different documents.

2) Endowments. While the traditional focus has been on the endowments of private foundations, the recent trend has been to see ever-growing endowments of public charities. These endowments, unlike private foundations, claim they have no legal requirement to pay out a dime (however, see the discussion of the commensurate test below). We have seen a very strong reaction from colleagues and the public to charities that have billions of dollars in the bank – or as is more common now, in investments offshore in places such as the Cayman Islands – and at the same time the entity provides only pennies on the dollar to the charitable goals of the organization.

The public needs to understand clearer what is the endowment of the charity (to include funds that are directly or indirectly under the control of the charity, such as a supporting organization); what those endowment funds are being spent on; the amount and percentage of the endowment being spent; how those endowment funds are being invested; the size of the endowment; what endowment funds are earmarked for specific purposes and what are those purposes; and, the costs of the management of the endowment. Consideration should be given to having a uniform definition of an endowment.

We want to digress for a moment and raise an aspect of endowments of public charities that is not directly related to reporting. The former Commissioner of the IRS spoke a few weeks ago, prior to his departure, that charities needed to provide charitable work commensurate with their resources. The Commissioner's statement is much in keeping with the commonsense view of the American taxpayer who subsidizes by billions of dollars a year the work of charities – that the point of giving is to help the community and those in need and not to help a charity build an even bigger bankroll. The commensurate test is an important part of assessing whether an entity is acting as a charity. The commensurate test is traditionally stated as: "where [a charity] is shown to be carrying on through such contributions and grants a charitable program commensurate in scope with its financial resources." The new Form 990 should allow the IRS and the public to easily identify how the commensurate test is being met. Please also inform us of what guidance Treasury and IRS are planning to put forward that will put more teeth into the commensurate test and what is the audit plan and results so far in this area.

3) Related Organizations. As discussed above in endowments and executive compensation, there needs to be a complete understanding of all related organizations – both for-profit and nonprofit – of a charity. It is important that the public be able to understand the big picture of what is going on at a charity. It is for a similar reason that Congress enacted legislation to make the Form 990T publicly available.

4) Joint Ventures. Similar to related organizations, to know the work of the charity it is critical to understand the joint ventures in which the organization is engaged. This information should include the purpose of the joint venture, the participants, the resources contributed and the key financial arrangements. We are particularly concerned that we have a better understanding of joint ventures in regards to hospitals and universities. While there can be benefits to joint ventures, such activities also raise red flags, particularly of charitable assets being used for private benefit.

5) Governance. Time and time again we have seen poor governance at the core of problems at charities. The IRS Commissioner in his March, 2005 letter to the Finance Committee made a similar finding: “Many of the situations in which we have found otherwise law-abiding organizations to be off-track stem from the failure of fiduciaries to appropriately manage the organization.” The Form 990 can serve a useful purpose of bringing a focus on governance issues both for the board and management of the charity as well as the public. We would suggest that the work of the BBB WiseGiving Alliance and the Panel on the Nonprofit Sector can serve as a useful guide to the IRS in this area.

6) Dollars Raised v. Dollars for Charity. There is probably no greater interest of the public than wanting to understand the answer to this question when they make a donation: how much of their money is actually going to a charitable activity (and not including money spent on more mailings). The IRS should seek to make this information easily and clearly available for the public.

7) Hospitals. Many of the issues we’ve discussed above have significant applicability to hospitals. However, in addition to those issues, we strongly urge the IRS to look closely to the supplemental reporting guidelines of the Catholic Health Association (CHA) regarding charity care and community benefits as a template. The CHA reporting structure has been embraced by many hospitals already. In addition, we believe that hospitals and other charities that engage in billing and debt collection should be required to outline the procedures they follow. Finally, it is important that the information provided clearly states in plain language what is the hospital’s charity care policy and how individuals are informed of that policy. The Finance Committee heard testimony last year that it was often the case that it was difficult to ascertain a hospital’s charitable care policy.

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We believe the greatest priority is speed in implementing these change to the Form 990. It is important that you send the signal to Treasury and IRS officials that a new and improved Form 990 and supplemental information should be a top priority to be completed and implemented. While we always hear that sunshine is the best disinfectant, sunshine can't do its work unless we open the blinds. The sooner we open those blinds the better. We also encourage the IRS to look at ways to ensure that Form 990's are made available to the public as soon as possible – perhaps by having charities post the Form 990 on their own website or for the IRS to more quickly provide the Form 990s information to organizations such as Guidestar that disseminate them more widely. We are also worried that with extensions for filing are routinely extended and that it is often months after the end of the tax year before a Form 990 is even filed.

Finally, the Form 990 is only as good as the information provided – to be beneficial the information must be complete and accurate. Unfortunately, that is too often not the case. Please inform us of current IRS efforts to improve and encourage accuracy of Form 990s and what are future plans in this area. Please also provide any suggestions you may have for Congress in terms of improving accuracy of Form 990s.

Thank you for your time and assistance on this matter. We would request a response within thirty days.

Cordially yours,

Max Baucus
Chairman

Charles E. Grassley
Ranking Member

cc: The Honorable Eric Solomon, Assistant Secretary of Treasury
The Honorable Donald Korb, Chief Counsel
Mr. Kevin Brown, Acting Commissioner IRS
Mr. Steven Miller, TE/GE IRS

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